

# **EXHIBIT 12**

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Co-Counsel for Plaintiff, The Official Committee of  
Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION**

In re:

THE LEGACY ESTATE GROUP, LLC, a  
California Limited Liability Company, formerly  
doing business as FREEMARK ABBEY WINERY,  
BYRON VINEYARD & WINERY, AND  
ARROWOOD VINEYARD & WINERY,

Debtor.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF THE LEGACY ESTATE  
GROUP, LLC,

Plaintiff,

v.

JOHN M. BRYAN, JOHN M. AND FLORENCE  
E. BRYAN TRUST, J.M. BRYAN FAMILY  
TRUST, KUL WINDER SIDHU, DEVINDER  
SIDHU, PACIFIC PARAGON INVESTMENT  
FUND LTD., a British Columbia company,  
HARRY CHEW, and AIC CAPITAL PARTNERS,  
LLC, a California limited liability company,

Defendants.

**Case No. 05-14659**

Chapter 11

Adversary Proceeding No. 06-01173

**PLAINTIFF'S OBJECTION TO  
DEFENDANT AND CROSS-  
CLAIMANTS' USE OF DEPOSITION  
TESTIMONY AT EVIDENTIARY  
HEARING**

**Hearing Date: September 27, 2007  
Hearing Time: 10:00 a.m.  
Santa Rosa Courtroom**

**Hon. Alan Jaroslovsky**

JOHN M. BRYAN, JOHN M. AND FLORENCE  
E. BRYAN TRUST, J.M. BRYAN FAMILY  
TRUST,

Defendants/Cross-Claimants,

v.

KULWINDER SIDHU, et al.,

Defendants/Cross-Defendants.

Plaintiff The Official Committee of Unsecured Creditors of the Estate of The Legacy Estate Group ("Plaintiff") submits the following objection to evidence cited by Defendants/Cross-Claimants John M. Bryan ("Mr. Bryan"), The John M. and Florence E. Bryan Trust and the J.M. Bryan Family Trust (collectively the "Bryan Defendants") in their Memorandum Of Points And Authorities Opposing A Judicial Determination That The John M. And Florence E. Bryan Trust Has Waived Its Right To A Jury Trial.

1. This action is set for an evidentiary hearing on September 27, 2007, pursuant to various orders of this Court. The limited issue to be tried is whether the John M. and Florence E. Bryan Trust has waived its right to a jury trial. When this evidentiary hearing was set, the Court directed declarations in lieu of direct testimony to be submitted prior to trial.

2. The Bryan Defendants submitted a Memorandum Of Points And Authorities Opposing A Judicial Determination That The John M. And Florence E. Bryan Trust Has Waived Its Right To A Jury Trial on September 25, 2007. [Docket No. 88] ("Bryan Opposition Brief").

3. In the Brian Opposition Brief, the Bryan Defendants rely on excerpts from the transcript of the deposition of John M. Bryan taken on September 21, 2007 ("Bryan Deposition Transcript"). See Bryan Opposition Brief at page 2.

4. The Bryan Defendants' reliance on the Bryan Deposition Transcript in the Bryan Opposition Brief is an improper attempt to circumvent this Court's Order requiring that all direct testimony be submitted by declaration prior to trial with the declarant available for cross-examination at the trial. In effect, the Bryan Defendants are improperly submitting direct testimony

1 of Mr. Bryan through the Bryan Opposition Brief as opposed to a declaration, thereby eliminating  
 2 the need to produce Mr. Bryan for cross-examination at the hearing on September 27, 2007.

3 5. Further, the Bryan Defendant's use of the Bryan Deposition Transcript is improper  
 4 under Federal Rule of Civil Procedure 32, made applicable to this action by Bankruptcy Rule 7032,  
 5 and Federal Rule of Evidence 801, made applicable to this action by Bankruptcy Rule 9017.  
 6 Although it is proper for Plaintiff to cite to and rely upon excerpts of the Bryan Deposition  
 7 Transcripts pursuant to Fed.R.Civ.P. 32(a)(2) (the deposition of a party may be used by an adverse  
 8 party for any purpose) and F.R.E. 801(d)(2) (admission by a party-opponent), the citations to the  
 9 Bryan Deposition Transcript by the Bryan Defendants are improper. The Bryan Defendants have  
 10 not shown that Mr. Bryan is unavailable nor have they shown exceptional circumstances entitling  
 11 them to rely on the Bryan Deposition Transcript under Fed.R.Civ.P. 32 or the Federal Rules of  
 12 Evidence.

13 6. For all the foregoing reasons, Plaintiff requests the Court to strike the reference to the  
 14 Bryan Deposition Transcript in the Bryan Opposition Brief and further requests that the Court  
 15 prevent the Bryan Defendants' improper use of the Bryan Deposition Transcript at the evidentiary  
 16 hearing on September 27, 2007.

17  
 18 Dated: September 26, 2007

**WINSTON & STRAWN LLP**

19 and

**MACCONAGHY & BARNIER, PLC**

20  
 21  
 22 /s/

23 \_\_\_\_\_  
 24 Hannah L. Blumenstiel  
 25 Co-Counsel for Plaintiff  
 26 Official Committee of Unsecured Creditors of  
 27 The Legacy Estate Group, LLC  
 28

1 **PROOF OF SERVICE**

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3 I, Kimberly Morris, certify and declare as follows:

4 I am over the age of eighteen years and not a party to this action. I am an employee

5 of Winston & Strawn LLP, and my business address is 101 California Street, San Francisco,

6 California, 94111. On September 26, 2007, I served a true and correct copy of:

7 **PLAINTIFF'S OBJECTION TO DEFENDANT AND CROSS DEFENDANTS' USE OF**

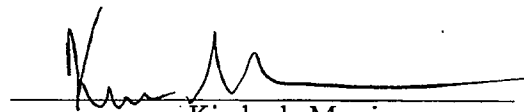
8 **DEPOSITION TESTIMONY AT EVIDENTIARY HEARING**

- 9 ☒ by first class mail. I am familiar with the business practice at my place of business for
- 10 collection and processing of correspondence for mailing with the United States Postal
- 11 Service. Correspondence so collected and processed is deposited with the United States
- 12 Postal Service that same day in the ordinary course of business. The document(s) was
- 13 (were) placed for deposit in the United States Postal Service in a sealed envelope(s), with
- 14 postage fully prepaid, addressed as set forth on the attached service list(s).
- 15 ☐ by facsimile transmission to the parties and facsimile number(s) set forth on the attached
- 16 service list. I sent such document from facsimile machine 415-591-1400. I certify that
- 17 said transmission was completed and that all pages were received and that a report was
- 18 generated by facsimile machine 415-591-1400 which confirms said transmission and
- 19 receipt.
- 20 ☐ by overnight delivery by enclosing a true and correct copy of said document(s) in a
- 21 Federal Express envelope(s) addressed as set forth on the attached service list. The
- 22 envelope(s) was (were) sealed and deposited with Federal Express that same day in the
- 23 ordinary course of business at San Francisco, California.
- 24 ☐ by messenger by handing a copy of said document(s) to \_\_\_\_\_, for
- 25 personal service by its agent to the person(s) at the address(es) set forth on the attached
- 26 service list.
- 27 ☐ by personally delivering the document(s) to the person(s) at the address(es) set forth on
- 28 the attached service list.
- ☐ by email transmission to the individuals and email addresses as set forth on the attached
- service list. I caused the document(s) to be transmitted via email. I am readily familiar
- with my firm's practice for email transmissions. In sending the above described
- document by email, I followed the firm's ordinary business practices.

24 I declare under penalty of perjury under the laws of the United States of America that

25 the foregoing is true and correct, and that this declaration was executed at San Francisco, California,

26 on September 26 2007.

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Kimberly Morris

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**SERVICE LIST**

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